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BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Annual Reports for the Year Ended December 31, 2002, Filed by Alternative
Telecommunications Utility-Telecommunications Resellers on a Confidential Basis

RE: PSC Control Nos. 24040, 24041, 24042, 24043, 24053, 24054, 24056, 24057,
24076, 25750, 26004, and 26006

CONFIDENTIALITY DETERMINATION

INTRODUCTION

On February 24, 2003, the Public Service Commission (Commission) issued a document entitled "Information Regarding Confidential Filings" concerning the 2002 Alternative Telecommunications Utility-Telecommunications Reseller (RES) annual report. The document detailed the filing process associated with the 2002 RES annual report¹ as well as previous confidentiality rulings concerning RES annual reports.²

On April 1 and 29, 2003, TTI National, Inc., (TTI) (utility 7039) submitted written applications seeking confidential treatment (including trade secret status) of certain information

¹ The February 24, 2003, document noted that the 2002 RES annual report could be filed using one of two procedures: 1) File the entire report on a public basis using the annual report program's e-mail capabilities; or 2) Submit a request for confidential handling, in accordance with Wis. Admin. Code § PSC 2.12, in conjunction with a manual filing of the report. A manual filing consists of two completed Confidentiality Request forms, two notarized affidavits, confidential hard copy pages, a confidential diskette containing annual report program files, and a complete public version of the 2002 report, the latter which is posted on the Commission's web page.

² The document noted that, subsequent to the Commission's denial of confidentiality requests concerning information contained in the 2001 RES annual report, a number of companies sought judicial review or filed a petition for reconsideration and stay of the Commission's determination. The Commission voluntarily stayed its determination pending the outcome of those court cases, which were then pending in the Dane County Circuit Court, and/or any subsequent related Commission action. Those cases were decided in 2003. Although the Commission prevailed in part, it voluntarily accepted a remand to re-determine the challenged determinations. The determinations made in the present decision are consistent with the circuit court's construction of the confidentiality rule.

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in its 2002 RES annual report. The information is filed under document PSC control numbers 24040, 24041, 24053, and 24054.³

On April 1 and 29, 2003, Telecom USA (utility 7101) submitted written applications seeking confidential treatment (including trade secret status) of certain information in its 2002 RES annual report. The information is filed under document PSC control numbers 24042, 24043, 24056, and 24057.⁴

On April 1 and May 15, 2003, ACC National Long Distance Corporation (ACC) (utility 7905) submitted written applications seeking confidential treatment (including trade secret status) of certain information in its 2002 RES annual report. The information is filed under document PSC control numbers 24076 and 25750.⁵

In particular, the above-referenced companies sought confidential treatment (including trade secret status) for the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes; Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin; Cost basis (including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as of December 31, 2002; and gross operating revenues, minutes of use and average number of customers generated by the provision of intrastate Wisconsin telecommunications services⁶ information on lines 1-5, 6, 7, and 8-10, respectively, on p. 6, Assessable Revenues; and the cost of plant portion of the schedule footnote shown on

³ Confidentiality Request Nos. 24040 and 24041 (April 1, 2003) and 24053 and 24054 (April 29, 2003).

⁴ Confidentiality Request Nos. 24042 and 24043 (April 1, 2003) and 24056 and 24057 (April 29, 2003).

⁵ Confidentiality Request Nos. 25750 (April 1, 2003) and 24076 (May 15, 2003).

⁶ The revenue data contained in this item is used to determine assessable revenues for intrastate universal service fund (USF) assessment purposes.

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p. 10, Schedule and Report Notes, applicable to p. 6⁷ in their respective 2002 RES annual reports. For the reasons stated in a Confidentiality Determination dated July 8, 2003, confidential treatment for the above specifically identified data was granted on a provisional basis, without consideration of the merits of the arguments of any company contained in respective affidavits accompanying the 2002 RES annual reports, based on the then-pending status of related court cases.

On August 13, 2003, Telecom USA submitted written applications seeking confidential treatment (including trade secret status) of certain information in its 2002 RES annual report. The information is filed under document PSC control numbers 26004 and 26006. The company requested confidential treatment for the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes; Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin; Cost basis (including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as of December 31, 2002; and gross operating revenues, minutes of use and average number of customers generated by the provision of intrastate Wisconsin telecommunications services information on lines 1-5, 6, 7, and 8-10,

⁷ While TTI and Telecom USA did not explicitly seek confidential treatment of selected information included on p. 6 (e.g., Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin, and Cost basis (including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as of December 31, 2002), they did seek confidential treatment of a portion of the schedule footnote for p. 6 shown on p. 10 pertaining to each company's respective cost of plant amount.

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respectively, on p. 6, Assessable Revenues; and the cost of plant portion of the schedule footnote shown on p. 10, Schedule and Report Notes, applicable to p. 6⁸ in the 2002 RES annual report.

In 2002, nine court cases were filed. The nine cases were subsequently consolidated into two cases. One court case resulted in a decision favorable to the Commission's determinations; the other court case resulted in an adverse decision. See footnote 2.

This confidentiality determination is made pursuant to the Commission's jurisdiction under Wis. Stat. §§ 196.02(1), 196.14, and other provisions of Wis. Stat. ch. 196 and Wis. Stat. §§ 19.32-.39, as may be pertinent hereto, the Commission's November 21, 2000, order delegating confidential handling determinations, and Wis. Admin. Code § PSC 2.12.

FINDINGS OF FACT

1. All of the above-referenced companies are Alternative Telecommunications Utility-Telecommunications Resellers (resellers) which are required to file an RES annual report with the Commission. The statutory filing date for the RES annual report covering 2002 calendar year operations was April 1, 2003; 358 resellers were required to file this report for the 2002 calendar year.⁹

2. The above requests for confidential handling concern portions of 2002 RES annual reports which individually became Commission records, within the meaning of Wis. Stat. § 19.32(2).

⁸ While Telecom USA did not explicitly seek confidential treatment of selected information included on p. 6 (e.g., Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin, and Cost basis (including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as of December 31, 2002), it did seek confidential treatment of a portion of the schedule footnote for p. 6 shown on p. 10 pertaining to the company's cost of plant amount.

⁹ As of the date of this determination, 286 of the 358 resellers have actually filed the 2002 RES annual report with the Commission.

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3. Each requester filed affidavits in support of the requests claiming that the records, if released, would aid a competitor of a public utility in competition with the public utility, as provided under Wis. Stat. § 196.14, and constitute trade secrets, as defined in Wis. Stat. § 19.32(2).

4. Pursuant to Wis. Admin. Code § PSC 2.12(6), the Commission has confidentially handled the records pending this determination and will continue to confidentially handle the records after the date of this determination.

5. The records contain information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

6. The records contain information that would aid a competitor of the respective entities in competition with the requesters.

CONCLUSIONS OF LAW

1. There is a reasonable basis to conclude that the records contain information which would aid a competitor of a public utility in competition with the public utility, within the meaning of Wis. Stat. § 196.14.

2. There is a reasonable basis to conclude that the records contain trade secrets within the meaning of Wis. Stat. § 134.90(1)(c).

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ORDER

WHEREFORE, confidential treatment of the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes; Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin; Cost basis (including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as of December 31, 2002; and gross operating revenues, minutes of use and average number of customers generated by the provision of intrastate Wisconsin telecommunications services information on lines 1-5, 6, 7, and 8-10, respectively, on p. 6, Assessable Revenues; and the cost of plant portion of the schedule footnote shown on p. 10, Schedule and Report Notes, applicable to p. 6 in the above-referenced companies' 2002 RES annual reports is **granted**. Trade secret status for such information under Wis. Stat. §§ 19.36(5) and 134.90(1)(c), as claimed by the three companies, is likewise **granted**.

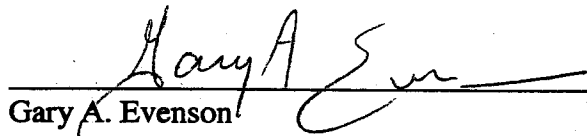
This confidentiality determination is not a final determination under the Public Records law; it is the Commission's decision for purposes of managing its files. This confidentiality determination does not prejudice the right of any person to submit a public records request to inspect the contents of the filings subject to this determination.

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This order is effective upon mailing.

Dated at Madison, Wisconsin, 21 April 2004

For the Commission:



Gary A. Evenson
Administrator
Telecommunications Division

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See attached Notice of Appeal Rights

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Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98